

## **Summary of Charter Review Task Force Discussions**

As set forth in the proposed Ballot Questions, the Charter Review Task Force recommended that six (6) questions be placed on the ballot for the electorate to decide in the upcoming 2016 election. A number of other items were discussed by the Task Force, but the Task Force ultimately elected to make no recommendation to Council on those items. This memo summarizes the discussions that occurred concerning various provisions in the Charter.

**Section 1. – Short Title.** Limited discussion and no recommendation.

**Section 2. – Legislative Intent.** The Task Force had a lengthy discussion about section 2D, which sets forth the Village's intent that land development costs for infrastructure be paid for by the developer and ultimate owners/users of the land. Chairman Adams was concerned that the provision might prevent the Village from being able to offer incentives to draw business and industry to the Village and proposed that the section be revised to permit opportunity zones of special interest. After legal review, it was determined that the provision would not preclude the designation of opportunity zones, CRAs or public-private partnerships, all of which are governed by statute. Although the Task Force agreed not to recommend any changes to Council, they nevertheless recognized that Council may choose to add some additional aspirational language to the "Legislative Intent" section of the charter. For example, they discussed inclusion of the following language:

It is the intent of this charter and the incorporation of the Wellington that the community continue to grow, develop, evolve and thrive and that public-private partnerships be encouraged to create economic development and redevelopment of land and to ensure the long term sustainability of the community

The addition of the above language would make it clear that Wellington can use financial incentives to entice businesses to locate here and would encourage developers to develop or re-develop commercial and business centers. These areas could potentially provide job opportunities for young people who have had to move away from Wellington in order to pursue their professional careers. It was important to the Task Force that Wellington continue to thrive and to be sustainable for the long term. It was also important to them that the language of the Charter not be construed as prohibiting the Village from using incentives to promote business within the community.

**Section 3. – Incorporation of municipality; corporate limits.** The Task Force discussed whether the Charter could be amended to eliminate references to the 1995 legislation and could otherwise be "cleaned up" by eliminating language that is no longer necessary. After legal review, it was determined that, with limited exceptions, all

changes to the Charter require a referendum. However, the Task Force could present an “integrated charter” reflecting all of the recommended changes, including the clean-up provisions, for referendum to the electorate.

**Section 4. – Municipal Powers.** Limited discussion. No changes proposed.

**Section 5. – Village Council.** Portions of this section of the Charter were discussed at length.

- Section 5A, which sets forth the council composition and qualifications of the councilmembers, was briefly discussed, but no changes were recommended.
- Section 5B, which sets forth the term of office for the mayor and councilmembers, was briefly discussed, but no changes were recommended.
- Section 5C, which sets for the power and duties of the mayor, was discussed at length. The Task Force weighed the relative pros and cons of having a strong mayor and of changing the term of the Mayor, but ultimately decided to recommend no changes.
- Section 5D, which establishes the office of Vice Mayor and sets forth his/her duties was briefly discussed, but no changes were recommended.
- Section 5E, which sets forth the compensation and expenses for council, was discussed at length. A survey of compensation paid by other municipalities was presented to the Task Force. A copy of the benefits survey is attached hereto. There was discussion concerning the fact that increasing one’s own compensation could have negative political consequences and therefore it might be beneficial to include in the Charter a provision for periodic review. The Task Force was sympathetic to the concern, but decided not to make such a recommendation. There was support, however, for removing the supermajority requirement to increase compensation.
- Section 5F, which sets forth the general powers and duties of council, was briefly discussed, but no changes were recommended.
- Section 5G, which provides the manner for filling vacancies in the office of Mayor and Council, was discussed. The Task Force determined that there was no benefit to treating the offices differently because the Mayor has no additional powers. The Task Force voted to recommend that Council vacancies be filled in the same manner as the vacancy in the office of Mayor. Under the proposed

language, when there is a vacancy in the office of the mayor or councilmember and less than 180 days remains in the term, there would be no appointment. If the vacancy was in the office of the mayor, the vice-mayor would serve temporarily. If the vacancy was in the office of vice-mayor, the council could appoint a new vice-mayor. Any other position would remain vacant. If 180 days or more remained in the term, there would be a special election and, to the extent the vacancy was in the office of mayor, the vice-mayor would serve until that election.

- Section 5H, which governs council meetings, including notice provisions for special meetings, was discussed at length. Florida law does not require any specific notice, but only that such notice be reasonable. Given the technology today and the many ways to provide notice on social media, as well as internet, what is reasonable today may be less than 72 hours. Such a change would not change items that require specific statutory notice, such as land use issues and rezoning. The 72 hour notice requirement in the Charter applies to emergent situations and things that may require quick action. Because this provision is more stringent than the notice required by Florida Statutes and because the Task Force felt there may be occasions where a special meeting is warranted, but is not of an emergency nature, the task force recommended removing the 72 hour notice requirement for special meetings in favor of simply following Florida law.
- Section 5I, which sets forth the requirements for keeping village records, was briefly discussed, but no changes were recommended.
- Section 5J, which empowers council to adopt codes, was briefly discussed, but no changes were recommended.
- Section 5K, which limits the employment of council members, was briefly discussed, but no changes were recommended.
- Section 5L, which prohibits interference by council with the performance of the duties of any employee of the Village under the direct or indirect supervision of the manager or attorney, was briefly discussed, but no changes were recommended.
- Section 5M, which provides for the transitional election of mayor and council, was discussed. The Task Force inquired whether this provision could be eliminated as part of a clean-up of the Charter. No changes were recommended.

**Section 6. – Budget and Appropriations.** Limited discussion. No changes proposed.

**Section 7. – Charter Officers.** Limited discussion. No changes proposed.

**Section 8. – Elections.** Portions of this section were discussed at length.

- Section 8A, which defines electors was briefly discussed, but no changes were recommended.
- Section 8B, which provides that Village elections are non-partisan, was briefly discussed, but no changes were recommended.
- Section 8C, which addresses qualifying for office, was briefly discussed, but no changes were recommended.
- Section 8D, which provides the schedule for elections, was discussed. The Task Force reviewed the cost of elections and the votes required to trigger a recount, but no changes were recommended.
- Section 8E, which provides the schedule for other elections, including special elections, was briefly discussed, but no changes were recommended.
- Section 8F, which governs determination of election to office, was discussed. The Task Force reviewed a previous change in the Charter that reduced the percentage of votes needed by a candidate to win an election without having a runoff. After analyzing the outcomes of past elections and the effect that the previous Charter revision had or would have had on those outcomes, the Task Force recommended no changes to this section.
- Section 8G, which establishes the makeup of the canvassing board, was discussed. The Task Force discussed the issues faced in the 2012 election, including the determination that the Village, and not the Supervisor of Elections, is the certifying body for purposes of election results, and the fact that the Supervisor is not authorized to be a member of Wellington's canvassing board. The Task Force also discussed whether there should be an independent canvassing board appointed for each election, which might include, for example, a judge. Further discussion was had concerning whether the Village should have its own election code, whether canvassing board members should endorse candidates running in the election they are canvassing and how to handle situations in which there are only one or two members of the canvassing board. Ultimately the Task Force agreed that no changes to this section should be made.
- Section 8H, which provides for recall of Village councilmembers was briefly discussed, but no changes were recommended.
- Section 8I, which provides for initiatives and referendum, was discussed at length. In particular, the Task Force discussed section 8I(b)(3) and what has

historically been referred to as the 5 mill cap. The Task Force recognized that the 5 mills is not really a cap, but rather a provision that allows the electorate to challenge any ordinance levying ad valorem taxes in excess of 5 mills. The Task Force felt that, as a practical matter, such an ordinance would not be enforceable. The petition to challenge such ordinance would have to be filed within 30 days after adoption of the ordinance. By the time the signatures were verified, the petition was determined sufficient, it was presented to Council for consideration and a referendum was scheduled and held, the budget year would be at least half gone. As a practical matter, such a measure would be unenforceable at that point.

The Task Force also discussed at length the difficulty in presenting this item to the electorate. The wording of the ballot summary and question makes it appear that citizens would be giving up a right they presently have, but in reality the perceived right they have is illusory. They wrestled at length with how best to present the matter to the voters so that they would understand that this provision, if used, could unnecessarily cost the taxpayer's money and they felt that removal of the provision is more transparent and open than leaving it in. As currently written, the current provision is somewhat misleading. Ultimately, the Task Force felt that the voters should be given a chance to make a choice and they can always vote it down. After much debate and revised motions, the Task Force has ultimately recommended consideration of the following ballot summary and ballot question:

**BALLOT SUMMARY:** As written, the charter provision that allows a referendum if the millage rate exceeds 5 mills is unenforceable. While originally intended to keep the millage rate low, such a referendum would be without effect and could result in a waste of taxpayer money. The Florida Statutes and the charter already provide other means to challenge the millage rate.

**BALLOT QUESTION:** Shall this unenforceable referendum provision and references to it be removed?

The Task Force also requested that council be made aware of the Second District Court of Appeal's decision in *Charlotte County Board of County Comm. v. Taylor*, 650 So. 2d 146 (Fla. 2d DCA 1995). In that case, the electors of Charlotte County, through an initiative process, approved an amendment to its charter that placed a limit on the adopted millage rate as follows:

**Limitation on Ad Valorem Taxes.** The Board of County Commissioners shall not adopt any millage rate which would result in more than three percent (3%) increase in total revenue generated from ad valorem taxes for any year over the total ad valorem taxes for the previous year; nor shall the Board of County Commissioners

fail to reduce the millage rate should such action be necessary to ensure that this three percent (3%) limitation takes effect.

Because various statutes provide the exclusive method for setting county-wide millage rates and require counties to prepare annual budget as required by law or by sound financial practices, and because such budgets control the levy of taxes, the court found that the provision conflicted with article VIII, section 1(g) of the Florida Constitution, which provides that local law may not be inconsistent with general or special laws of the state. It should be noted, however, that Wellington's Charter, including the 5 mill referendum provision, was adopted by a special act of the Florida Legislature and therefore controls over general law to the contrary. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984).

The Task Force also requested that Council be made aware of the fact that, pursuant to Florida law, the total millage rate from all sources, including MSTUs, cannot exceed 10 mills. Currently, the millage rate from all sources is as follows:

Wellington millage:	2.45 mills
Fire MSTU:	3.458
Library MSTU:	0.549

Based on the above, Wellington is well within the 10 mill cap.

After full discussion of the matter, the Task Force voted to recommend elimination of this provision from the Charter.

**Section 9. – Transition Schedule.** Section 9 was discussed by the Task Force. A transition schedule was necessary at the time the Village was incorporated, but is no longer necessary now that the transition is complete. The Task Force initially recommended that this section of the Charter be eliminated, but ultimately felt it was not ballot worthy.

**Section 10. – Continuation, merger and dissolution of existing districts.** This section of the Charter was discussed at length.

- Section A (Palm Beach County Fire MSTU) and section B (Law enforcement.) The Charter provides that the Village may not establish its own fire or police departments without a referendum of the electorate. The Task Force considered whether this requirement hampers the Village in its ability to negotiate its contract with PBSO and whether fire services could be provided more economically by having a Village fire department. When the PBSO contract renewals come up, the Village is left in somewhat of a “take it or

leave it” position because PBSO knows that the Village Council cannot simply vote to have its own police force. This places the Village at a disadvantage in trying to negotiate the most favorable contract. Staff looked at other communities that are taking those departments in-house to determine whether they went to referendum. Based upon the research, it was determined that most of those communities did not submit the issue to the voters. After significant discussion, the Task Force voted to make no changes to this provision. This was, in part, because they did not want to take the right of referendum away from the voters for such a significant change in the delivery of services. However, the Task Force did recommend that Council do a cost analysis to determine whether it would be feasible and more economical for the Village to have its own police and fire departments.

- Section C. (Library MSTU). No changes were proposed.
- Sections D, E and F (Palm Beach County MSTUs B, C and F). At the direction of the Task Force, staff researched the current status of these MSTUs and found that the County has consolidated MSTUs A-F. Initially, the Task Force recommended that these provisions of the Charter be revised to eliminate the reference, but ultimately decided to make no changes because doing so would have no effect.
- Section G (Acme Improvement District). The Task Force requested a presentation by staff on the advantages and disadvantages of retaining Acme. Staff reviewed the history of Acme, beginning with the drainage district back in the 50's, the conversion of Acme into an improvement district in the 70's and ultimately the function of Acme after incorporation. Ken Edwards, Esq. made a presentation on special districts. Currently Acme provides surface water management, storm water management, environmental services and operates and maintains neighborhood parks. It also maintains equestrian trails and does various things throughout the EPA. Under Acme, people pay for the benefits they are receiving. Without Acme, the Village would likely have to set up a storm water utility and the fees for services would be billed through utility bills. Acme is not subject to the exemptions that apply to Wellington, such as homestead, agricultural and religious exemptions. Everyone who receives services from Acme has to pay for them. Mr. Edwards did not recommend dissolving Acme, but it could be set up as an independent district. The Task Force discussed at length whether it made sense to dissolve Acme, including the fact that under the current Charter, and due to annexations since the time of incorporation, people living outside the district may wind up governing Acme because the Village Council members also serve as Acme board members. In addition, there are some parks in Wellington that are paid for through Acme, yet are

used by many living outside of Acme's boundaries. Thus, people outside the district get a benefit without paying the cost to maintain. The same is true for environmental services, such as mosquito control. Areas such as Olympia and Rustic Ranches benefit without being assessed for the costs. The Task Force discussed the method by which property owners are taxed based upon the Water Control Plan and recognized that Acme is another mechanism for providing services and paying for those services. The Task Force considered whether the governance of Acme should be changed so that property owners within the district serve as the supervisors. There was also discussion concerning whether to strip away all powers of Acme except for the water management aspect and to have Acme simply function as a drainage district. The Village has the ability to use the assessment power of Chapter 170 rather than Acme, but what would be lost is the ability to fund subsequent operation and maintenance through Acme. The Task Force was aware that Acme could be misused because there is potentially a duplication of powers given to the Village and to Acme. The two entities should be understood by the electorate and there should be more transparency and accountability. After much discussion, the Task Force agreed that accounting procedures for Acme should ensure there is no duplication of services, but ultimately recommended no changes to this section.

**Section 11. – Land Description.** This section was briefly discussed, but no changes were recommended.

**Section 12. – General Provisions.** The Task Force considered whether to add a specific requirement to the Charter that would require review of the Charter periodically. After discussion, no changes were recommended.

**Section 13. – Severability.** No changes were proposed.

**Section 14. – Effective Dates.** No changes were proposed.

**Discussion concerning Miscellaneous Provisions.**

- The Task Force discussed how best to protect the equestrian element of the community. It also discussed the fact that the equestrian element is part of Wellington's comprehensive plan and there is also an Equestrian Overlay Zoning District, both of which serve to protect that element of the community. However, a future council could change the EOZD through comprehensive plan amendments and changes to the land development regulations. Discussion took place concerning the fact that some areas within the EOZD that include non-equestrian developments (e.g. Grand Prix Farms and Equestrian Club), developed as clusters. There are other



areas that elected not to be included in the EOZD (e.g. 40 acres east of Mocato). However, cluster developments are only allowed in Sub-area D of the Country Place PUD. The Task Force also discussed whether the Village should have single member districts, including an equestrian district, in order to ensure representation of that element on the Village Council, or alternatively whether a property owner from the EOZD should serve on the Acme board. The Task Force agreed that this could pose potential problems because the member may not be here during season to attend meetings. Staff made a presentation to the Task Force on the Equestrian Preserve Area. In addition, following a public forum on the proposed Charter revisions, the Task Force held a joint meeting with the Equestrian Preserve Task Force. It was decided that language should be added to the Charter that would define the boundaries of the EPA and that would allow properties to be voluntarily included in the EPA by a majority vote of Council, but that no properties could be removed without a referendum. Ms. Ramaglia noted that there may be reasons in the future to include properties within the EPA on an involuntary basis where such inclusion was not initiated by the property owner, but the majority of the Task Force voted to recommend voluntary inclusion in the EPA. Although the EPC wanted to include a provision in the Charter that would ensure the continual existence of an EPC-like Task Force, the Charter Review Task Force voted against inclusion of such Task Force in the Charter.

Subsequent to both the public forum and the joint meeting with the EPC, staff was made aware of a fairly new statute (F.S. § 163.3167(8)) that would preclude the Village from including within its Charter a provision that requiring a voter referendum to change the boundaries of the EPA. In order to comply with this statutory provision, the Task Force voted to change the wording to the proposed ballot summary as follows:

**BALLOT SUMMARY:** The original Charter makes no reference to the Equestrian Preserve Area. The proposed amendment would permit landowners to apply to be voluntarily included in the Preserve Area upon majority vote by Council, but would prohibit removal of properties from the Equestrian Preserve Area without a super-majority vote.

**BALLOT QUESTION:** Shall the Charter be amended to include a provision protecting the Equestrian Preserve Area?

- The Task Force also discussed whether to include incentives for redevelopment of commercial properties and for employers to bring jobs to Wellington, but decided such provisions do not belong in a charter.

- The Task Force also discussed whether to have separate ballot questions or an integrated charter. Because votes may like only some proposed revisions and not all, it was decided it would be better to present ballot questions.